

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Carayannis	Team: Team # 1	CCRB Case #: 201407988	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/05/2014 7:41 PM	Location of Incident: § 87(2)(b)	Precinct: 77	18 Mo. SOL 2/5/2016	EO SOL 2/5/2016	
Date/Time CV Reported Tue, 08/05/2014 7:44 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 08/05/2014 7:44 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Alejandro Valderrama	23435	953512	077 PCT
2. POM Dominick Vitale	21711	953538	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Dominick Vitale	Abuse: PO Dominick Vitale questioned § 87(2)(b)	§ 87(2)(b)
B.POM Alejandro Valderrama	Abuse: PO Alejandro Valderrama questioned § 87(2)(b)	§ 87(2)(b)
C.POM Alejandro Valderrama	Abuse: PO Alejandro Valderrama searched § 87(2)(b)	§ 87(2)(b)
D.POM Alejandro Valderrama	Abuse: PO Alejandro Valderrama refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)

Case Summary

On August 5, 2014, at approximately 7:44 p.m., § 87(2)(b) filed the following complaint via the CCRB's Call Processing System (encl. C1).

On August 5, 2014, at approximately 7:41 p.m., § 87(2)(b) was stopped by PO Dominick Vitale and PO Alejandro Valderrama, both from the 77th Precinct, and as a result of the stop, the following allegations arose:

Allegation A—Abuse of Authority: PO Dominick Vitale questioned § 87(2)(b)

Allegation B—Abuse of Authority: PO Alejandro Valderrama questioned § 87(2)(b)

§ 87(2)(g)

Allegation C—Abuse of Authority: PO Alejandro Valderrama searched § 87(2)(b)

§ 87(2)(g)

Allegation D—Abuse of Authority: PO Alejandro Valderrama refused to provide his shield number to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) refused to mediate this complaint.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- See enclosure for § 87(2)(b)'s pedigree information (encl. C4).

Photographs

§ 87(2)(b) took photographs with his cellphone during the incident. Two photographs show a bottle of beer inside of a ripped plastic bag (encl. C5-6). One photograph shows a marked patrol vehicle with the number 435313 written on the side (encl. C7). One photograph shows a white male officer in the driver's seat of a marked patrol vehicle (encl. C8). The last photograph shows the same white male officer in the driver's seat. His shield is legible as 21711 and his lapel pin is legible as 77. In the passenger seat is a stocky Hispanic male in uniform (encl. C9).

CCRB Statement

In addition to his initial statement via the Call Processing System (encl. C1), § 87(2)(b) provided a statement over the telephone on August 6, 2014 (encl. C2) and he was interviewed in-person at the CCRB on August 25, 2014. His lawyer, § 87(2)(b), was present for his in-person statement. § 87(2)(g) (encl. C3-12). § 87(2)(b) also provided follow-up details over the telephone on November 12, 2014 (encl. C13).

On August 5, 2014, at approximately 7:41 p.m., § 87(2)(b) walked to his house at § 87(2)(b) in Brooklyn from Utica Avenue and Saint Marks Avenue. § 87(2)(b) walked from a corner store near the corner of § 87(2)(b). While there he bought one Bud Ice in a bottle and one small pack of incense. The store clerk placed both items in a black plastic bag. § 87(2)(b) walked from the corner store directly to his house. While walking to his house, he noticed a marked patrol vehicle approximately 20 feet from his front door. The police vehicle was double parked and pointed toward § 87(2)(b).

§ 87(2)(b)'s door has a gate in front of it. § 87(2)(b) opened the gate, which required a key, and sat down on the steps immediately in front of his door. § 87(2)(b) is a private house and the steps abut the sidewalk. The area is primarily residential and there were not many people on the street at the time. After approximately 10 to 15 seconds of sitting, without opening the beer, PO Dominick Vitale drove the vehicle directly to the front of the house. PO Vitale, who was identified by the investigation and described as a slim, 5'6" tall white or Hispanic male with a goatee and moustache and who was dressed in uniform, said from the vehicle, "Are you drinking?" PO Vitale asked this from the driver's side window, which was open. § 87(2)(b) responded that he was not. Immediately after § 87(2)(b) said that, both PO Vitale and PO Valderrama, stepped out of the vehicle and approached him. PO Valderrama was identified by the investigation and was described as a heavy-set, 6'2" tall, caramel skinned male dressed in uniform. PO Vitale stood to the side and front of § 87(2)(b) as though to block his path if he were to run, and PO Valderrama walked directly to him. § 87(2)(b) did not stand up nor did he move his arms. PO Valderrama grabbed § 87(2)(b)'s black plastic bag from his hand, with the unopened beer bottle and the incense sticks. PO Valderrama ripped the bag open, looked at the beer, and set the beer and the bag on the sidewalk in front of § 87(2)(b). The incense fell on the ground beside the bag. Both officers turned around to walk back to the marked patrol vehicle. § 87(2)(b) asked PO Valderrama what his shield number was. In his in-person statement, § 87(2)(b) stated that he asked PO Vitale for this information, however in both telephone statements he stated that he requested this information from PO Valderrama. In his telephone statement, § 87(2)(b) stated that he asked PO Valderrama for both his name and his shield number. PO Valderrama was approximately two feet away from § 87(2)(b) when § 87(2)(b) asked this. PO Valderrama did not respond and kept walking. § 87(2)(b) assumed that PO Valderrama heard his request. PO Vitale did not respond or turn to look at § 87(2)(b). Both officers got into the marked patrol vehicle.

§ 87(2)(b) immediately removed his cellphone and took photos of the police vehicle and the officers turned right. § 87(2)(b) immediately took one photo of the bottle on the ground. He then removed the bottle from the bag and took a photograph to show how the bag was ripped. § 87(2)(b) called the CCRB immediately thereafter and filed his complaint.

NYPD Statements:

Subject Officer: PO ALEJANDRO VALDERRAMA

- *See enclosure for PO Valderrama's pedigree information and assignment (encl. D5)*

Memo Book

At 7:41 p.m., one male was stopped at § 87(2)(b). At 7:45 p.m., PO Valderrama resumed patrol after warning and admonishing § 87(2)(b) (encl. D1-4).

CCRB Statement

PO Valderrama was interviewed at the CCRB on November 12, 2014 (encl. D5-7).

On August 5, 2014, at approximately 7:41 p.m., PO Valderrama and PO Vitale were driving westbound on § 87(2)(b). PO Valderrama believed that he was the driver of the police vehicle, but he was not certain. He observed § 87(2)(b) sitting in front of § 87(2)(b) with

an open beer bottle on the ground in front of him. The beer bottle was in a bag, but he could not recall if the beer was in a plastic bag or in a paper bag. The top of the beer was sticking out of the top of the bag. The driver's side of the vehicle was closer to § 87(2)(b) than the passenger side. PO Valderrama observed § 87(2)(b) for less than 10 seconds before stopping his vehicle in front of § 87(2)(b) and approaching § 87(2)(b). PO Vitale also approached § 87(2)(b) and said, "You cannot be drinking out here." § 87(2)(b) responded, but PO Valderrama could not recall the substance of what he said. § 87(2)(b) appeared to be agitated when PO Valderrama and PO Vitale approached him. He expressed this agitation in the tone of his voice. During the conversation that ensued, § 87(2)(b) was speaking loud enough for other people in the area to hear him. PO Vitale stood next to PO Valderrama during the incident. PO Valderrama could not recall if § 87(2)(b) spoke to PO Vitale and he did not recall if PO Vitale spoke to § 87(2)(b).

PO Valderrama picked up the bottle of beer. He did this as he wanted to double check that the beer was open. It was. After PO Valderrama picked up the bottle, § 87(2)(b) attempted to grab the bottle out of PO Valderrama's hand, but PO Valderrama had a tight enough grip on the bottle to prevent him from taking it. PO Valderrama could not recall if the bottle was full, partially full, or empty. PO Valderrama could not recall if the bag the bottle was in ever ripped open during the incident or if he picked up the bag. § 87(2)(b) stood up at this point. He also gestured his body such that his chest was thrust forward quickly and then went back to its normal position. PO Valderrama described this gesture as "fronting" and stated that it was not a lunge, but a "subtle" gesture. § 87(2)(b) continued to yell. PO Valderrama was afraid that § 87(2)(b) was going to become violent at this point, given the aforementioned gesture and the volume of his voice. PO Valderrama set the beer bottle on the ground. PO Valderrama warned § 87(2)(b) against drinking on the street or he would be summonsed. PO Valderrama decided to warn § 87(2)(b) about the alcohol instead of summonsing him because he was afraid that § 87(2)(b) would become violent. PO Valderrama and PO Vitale walked away from § 87(2)(b) and returned to the vehicle. PO Valderrama did not hear § 87(2)(b) ask for his name or his shield number and he did not hear § 87(2)(b) ask for PO Vitale's name and shield number.

PO Valderrama was shown the photographs taken by § 87(2)(b) with his cellphone during the incident. He did not know if the bottle depicted in the photographs was the same as the bottle he had seen. He acknowledged that the bottle in the photograph had a lid, and he did not recall seeing any other bottle around § 87(2)(b). PO Valderrama did not prepare a Stop, Question, and Frisk Report for the incident as § 87(2)(b) was warned and admonished and he was not summonsed. The entire incident lasted "a little more than a minute."

Subject Officer: PO DOMINICK VITALE

- *For PO Vitale's pedigree and assignment information, see enclosure (encl. 5-6).*

Memo Book

At 7:41 p.m., one male was stopped at § 87(2)(b). At 7:45 p.m., PO Vitale resumed patrol after warning and admonishing § 87(2)(b) (encl. E1-4).

CCRB Statement

PO Vitale was interviewed at the CCRB on November 12, 2014 (encl. E5-6). § 87(2)(g)

PO Vitale observed § 87(2)(b) with an open beer bottle in front of § 87(2)(b). PO Vitale did not observe § 87(2)(b) drinking the beer. He could not recall if the beer was in § 87(2)(b)'s hand or if it was on the ground. He could not recall the position of the beer in relation to § 87(2)(b). Both PO Vitale and PO Valderrama spoke with § 87(2)(b) who expressed his irritation by raising the volume of his voice and gesturing with his hands. PO Vitale could not recall the

conversation.

PO Vitale approached § 87(2)(b) to inquire about the open container of beer. PO Vitale did not ask § 87(2)(b) any questions about the bottle of beer and he could not recall if PO Valderrama asked any questions regarding the open container of beer. He was afraid that § 87(2)(b) might become violent as he was yelling and gesturing with his hand while he yelled. PO Vitale could not recall how loud § 87(2)(b) was yelling. PO Vitale and PO Valderrama walked away and resumed patrol. PO Vitale did not recall if § 87(2)(b) said anything further as they walked away from him.

PO Vitale did not prepare a Stop, Question, and Frisk Report for this incident as § 87(2)(b)'s offense was only a violation and not a misdemeanor or felony offense and because they only warned and admonished § 87(2)(b) for the offense.

Status of Civil Proceedings

- A FOIL request for any Notice of Claim was filed with New York City Office of the Comptroller. To date this FOIL request has not been responded to. § 87(2)(b)'s attorney stated, off the record, that § 87(2)(b) did not intend to file a notice of claim.

Civilian's Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Civilian's CCRB History

- § 87(2)(b) has filed the following CCRB complaints (encl. B3):
 - § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
 - [REDACTED]

Subject Officers' CCRB Histories

- PO Dominick Vitale has been a member of the service for two years. This is the first CCRB complaint filed against him (encl. B1).
- PO Alejandro Valderrama has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. B2).

Conclusion

Identification of Subject Officers

PO Vitale and PO Valderrama acknowledged interacting with § 87(2)(b) on the date of incident. In both of his telephone statements, § 87(2)(b) stated that he asked PO Valderrama for his shield number, but in his in-person statement he said it was PO Vitale. On November 12, 2014, § 87(2)(b) clarified that he meant PO Valderrama and not PO Vitale, § 87(2)(g) [REDACTED].

Allegation not pled

§ 87(2)(b) stated that PO Valderrama ripped open the plastic bag which contained his bottle of beer. § 87(2)(g) [REDACTED].

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: PO Dominick Vitale questioned § 87(2)(b)

Allegation B—Abuse of Authority: PO Alejandro Valderrama questioned § 87(2)(b)

§ 87(2)(b)

It is not disputed that PO Vitale and PO Valderrama questioned § 87(2)(b) PO Valderrama's and PO Vitale's memo books both state that the interaction started at 7:41 p.m. § 87(2)(b) called his complaint into the CCRB at 7:45 p.m. on the same day. It is not disputed the § 87(2)(b) possessed a bottle of beer. § 87(2)(g)

§ 87(2)(b) stated that he had a closed bottle of beer in a black plastic bag in front of his house. He had just sat down on his front steps when PO Valderrama and PO Vitale approached him. PO Vitale asked him if he was drinking and immediately stepped out of the vehicle with PO Valderrama to approach him. PO Valderrama ripped open the bag, observed the closed beer container, set the bag down and left. While the officers were leaving § 87(2)(b) took photographs of the officer and the beer bottle which he provided to the CCRB. The beer bottle was closed in these photographs.

PO Vitale and PO Valderrama both stated that § 87(2)(b) was in front of § 87(2)(b) with an open bottle of beer in a bag. They approached him with the intention of investigating the open container. PO Valderrama and PO Vitale told § 87(2)(b) he was not allowed to drink on the street. PO Valderrama picked up the beer bottle to double check that it was open. He could not recall if the beer was partially full, full, or empty. PO Vitale and PO Valderrama left without summoning § 87(2)(b) because he became verbally angry with them and they feared for their safety in his presence. Instead PO Valderrama returned the beer bottle to § 87(2)(b) and warned him that he could not drink alcohol on the street. Both PO Vitale and PO Valderrama reviewed the photograph of the bottle of beer with a cap on it. Regardless, both affirmed that the bottle they had seen was open.

People v DeBour, 40 N.Y.2d 210, 215 (1976) (encl. A5-15) Officers must have founded suspicion that a crime has occurred, is occurring, or is imminent, to question an individual.

People v. Mack 49 A.D.3d 1291 (encl. A17-18) An observation of a glass bottle wrapped in a bag in public gives an officer founded suspicion of criminality.

§ 87(2)(g)

Allegation C—Abuse of Authority: PO Alejandro Valderrama searched § 87(2)(b)

It is not disputed that PO Valderrama picked up § 87(2)(b)'s bottle of beer, which was in a plastic bag. § 87(2)(b) stated that the beer bottle was entirely in the bag and that PO Valderrama ripped open the bag to see the contents within. PO Valderrama stated that the beer bottle was half in and half out of the bag and he picked it up to investigate whether or not the bottle was open. § 87(2)(b) attempted to grab the bottle back from PO Valderrama. PO Valderrama did not recall if the bag ripped or not. PO Vitale corroborated PO Vitale's statement. § 87(2)(g)

Allegation D—Abuse of Authority: PO Alejandro Valderrama refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) stated that when PO Valderrama walked away from him toward his vehicle, § 87(2)(b) asked PO Valderrama for his shield number. PO Valderrama was approximately two feet away from § 87(2)(b) when § 87(2)(b) asked him for this information. PO Vitale and PO Valderrama did not respond and walked away. § 87(2)(b) provided photographs of both officers and their vehicle taken at the scene immediately after the incident. § 87(2)(b) did not provide PO Valderrama's shield number when he filed his complaint and did not allege that PO Valderrama refused to provide his shield number in his brief intake call.

PO Valderrama did not hear § 87(2)(b) ask for his name and shield number. PO Vitale did not remember anything that § 87(2)(b) said during the incident.

Patrol Guide Procedure 203-09 (encl.A16) An officer must state his name, rank, shield, and command to any civilian who asks for it, or otherwise provide this information.

§ 87(2)(g)

Team: One

Investigator:	<u>Lily Carayannis</u>	<u>December 30, 2014</u>
	Signature	Date

Supervisor:	<u></u>	<u></u>
	Title/Signature	Date

Reviewer:	<u></u>	<u></u>
	Title/Signature	Date

Reviewer:	<u></u>	<u></u>
	Title/Signature	Date